

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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U.S. DISTRICT COURT  
SAN JUAN, P.R.



Date: 2/11/2022  
By: Reina Alvarez  
Courtroom Deputy

UNITED STATES OF AMERICA,  
Plaintiff,

v.

[3] JOSEPH MARTE-RODRIGUEZ,  
Defendant.

CRIMINAL NO. 21-085 (SCC)

PLEA AND FORFEITURE AGREEMENT

TO THE HONORABLE COURT:

The United States of America, Defendant, Joseph Marte-Rodriguez, and Defendant's counsel, Jose R. Aguayo, Esq., pursuant to Federal Rule of Criminal Procedure 11, state that they have reached a Plea Agreement, the terms and conditions of which are as follows:

1. **Charges to which Defendant will Plead Guilty**

Defendant agrees to plead guilty to Count One of the Indictment:

Count One: From at least in or about August, 2015 and continuing up to and until the return of the instant Indictment, in the Municipalities of San Juan, Carolina and Trujillo Alto, District of Puerto Rico and within the jurisdiction of this Court, the defendant, did knowingly and intentionally, combine, conspire, and agree with each other and with diverse other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to knowingly and intentionally possess with intent to distribute and/or to distribute controlled substances, to wit: in excess of two hundred and eighty (280) grams of a mixture or

JMR  
[Signature]

substance containing a detectable amount of cocaine base (crack), a Schedule II Narcotic Drug Controlled Substance; in excess of one (1) kilogram of a mixture or substance containing a detectable amount of heroin, a Schedule I, Narcotic Drug Controlled Substance; in excess of five (5) kilograms of a mixture or substance containing a detectable amount of cocaine, a Schedule II, Narcotic Drug Controlled Substance; in excess of one hundred (100) kilograms of a mixture or substance containing a detectable amount of marijuana, a Schedule I, Controlled Substance; a mixture or substance containing a detectable amount of Oxycodone (commonly known as Percocet), a Schedule II Controlled Substance; and a mixture or substance containing a detectable amount of Alprazolam (commonly known as Xanax), a Schedule IV Controlled Substance; within one thousand (1,000) feet of a real property comprising the Jardines del Paraiso Public Housing Project, Jardines de Monte Hatillo Public Housing Project, Las Dalias Public Housing Project, Monte Park Public Housing Project, Jardines de Campo Public Housing Project, San Martin Public Housing Project, Jardines de Country Club, Ernesto Ramos Antonini Public Housing Project, La Esmeralda Public Housing Project, Nuestra Senora de Covadonga Public Housing Project, housing facilities owned by a public housing authority and Los Claveles Condominium and Buen Consejo Ward, all within one thousand (1,000) feet of a real property comprising a public or private school and/or playground. All in violation of Title 21, United States Code Sections 841(a)(1), 846 and 860.


The object of the conspiracy was the large-scale distribution of controlled



substances at the above-named locations for significant financial gain and profit.

Count Six: From at least August, 2015 and continuing up to and including the return of the instant Indictment, in the Municipalities of San Juan, Carolina and Trujillo Alto, District of Puerto Rico, the defendant did knowingly and unlawfully possess firearms, of unknown make and caliber, as that term is defined in Title 18, United States Code, Section 921(a)(3), in furtherance of a drug trafficking crime for which they may be prosecuted in a Court of the United States, that is possession with intent to distribute controlled substances. All in violation of Title 18, United States Code, § 924(c)(1)(A).

## 2. Maximum Penalties



Count One: The maximum statutory penalty for the offense charged in Count One of the Indictment, is a term of imprisonment of not less than 10 years nor more than two terms of life in prison pursuant to 21 U.S.C. §§ 860(a) & 841(b)(1)(A); a fine not to exceed \$20,000,000; and a supervised release term of at least 10 years, pursuant to 21 U.S.C. §§ 841(b)(1)(A), 846 and 860.

Count Six: The maximum statutory penalty for the offense charged in Count Six of the Indictment, is a term of imprisonment of not less than 5 years nor more than life in prison pursuant to 18 U.S.C. § 924(c); a fine not to exceed \$250,000; and a supervised release term of not more than five years, pursuant to 18 U.S.C. § 3583(b)(1).

However, as to Count One, based on the stipulated and agreed charges and amount of narcotics possessed by the defendant, that is, at least 500 grams of cocaine but no more than 2 kilograms of cocaine within one thousand feet of a protected location, the

defendant faces a term of imprisonment of at least 5 but not more than 40 years, a fine not to exceed \$10,000,000, and a term of supervised release of at least 6 years in addition to any term of incarceration, pursuant to 21 U.S.C. §§ 841(b)(1)(B), 846 and 860. The potential penalties for Count Six remain the same.

### 3. Sentencing Guidelines Applicability

JMR  
Defendant understands that the sentence will be imposed by the Court in accordance with 18 U.S.C. §§ 3551-86, and the United States Sentencing Guidelines (hereinafter "Guidelines"), which are advisory pursuant to the United States Supreme Court decision in *United States v. Booker*, 543 U.S. 220 (2005). Further, Defendant acknowledges that parole has been abolished, and that the imposition of Defendant's sentence may not be suspended.

### 4. Special Monetary Assessment

Defendant agrees to pay a special monetary assessment ("SMA") of one hundred dollars (\$100.00) per count of conviction. The SMA will be deposited in the Crime Victim Fund, pursuant to 18 U.S.C. § 3013 (a)(2)(A).

### 5. Fines and Restitution

The Court may, pursuant to Section 5E1.2 of the Guidelines order Defendant to pay a fine. The Court may also impose restitution. Defendant agrees to execute and make available, prior to sentencing, a standardized financial statement (OBD Form 500). The United States will advocate on behalf of any identified victim and comply with its obligations under the Mandatory Victim Restitution Act of 1996.



**6. Sentence to be Determined by the Court**

Defendant understands that the sentence to be imposed will be determined solely by the United States District Judge. The United States cannot make and has not made any promise or representation as to what sentence Defendant will receive. Any discussions that the parties might have had about possible sentences are not binding in any way on the Court, and do not constitute representations about what the parties will seek, or what the actual sentence will be.

**7. Recommended Sentencing Guidelines Calculations**

After due consideration of the relevant factors enumerated in 18 U.S.C. § 3553(a), the United States and Defendant submit that the advisory Guidelines calculations listed below apply to Defendant as to Count One. However, Defendant acknowledges that the Court is not required to accept those recommended Guidelines calculations.

SENTENCING GUIDELINES CALCULATIONS					
COUNT ONE					
21 U.S.C. §§ 841, 846 and 860					
Base Offense Level pursuant to U.S.S.G. § 2D1.1(8)					24
Protected Location §2D1.2					+2
Leadership §3B1.1(c)					+2
Acceptance of Responsibility pursuant to U.S.S.G. §3E1.1					-3
<b>TOTAL ADJUSTED OFFENSE LEVEL</b>					<b>25</b>
CH Cat. I	CH Cat. II	CH Cat. III	CH Cat. IV	CH Cat. V	CH Cat. VI
57-71	63-78	70-87	84-105	100-125	110-137

As to Count Six, the United States and Defendant submit that pursuant to United States Sentencing Guidelines § 2K2.4(b), a defendant that is convicted of violating 18 U.S.C. § 924 (c)(1)(A), has a guideline sentence equal to the minimum term of imprisonment required by statute. In the present case, pursuant to 18 U.S.C. § 924(c)(1)(A)(i), there is a minimum term of imprisonment of sixty (60) months.

#### **8. Sentence Recommendation**

JMR  
After due consideration of the relevant factors enumerated in 18 U.S.C. § 3553(a), as to Count One, both parties will recommend a term of imprisonment of 63 months. Both parties will recommend a sentence of 60 months as to Count Six. Both parties will recommend that the sentences be served consecutively with each other. The parties agree that case 18-033 is relevant conduct to this case.

The parties also agree that, in the revocation of case 18-033, they will jointly recommend that Defendant be sentenced to 15 months consecutive to this case.

The parties agree that any recommendation by either party for a term of imprisonment below or above the agreed-upon sentence recommendation will constitute a material breach of the Plea Agreement.

#### **9. No Stipulation as to Criminal History Category**

The parties do not stipulate as to any Criminal History Category for Defendant.

#### **10. Waiver of Appeal**

Defendant knowingly and voluntarily agrees that, if the imprisonment sentence imposed by the Court is 123 months or less, Defendant waives the right to appeal any



aspect of this case's judgment and sentence, including, but not limited to the term of imprisonment or probation, restitution, fines, forfeiture, and the term and conditions of supervised release.

### **11.No Further Adjustments or Departures**

JMR  
The United States and Defendant agree that no further adjustments or departures to Defendant's total adjusted base offense level and no variant sentence under 18 U.S.C. § 3553—other than any explicitly provided for in this Plea Agreement—shall be sought by Defendant. The parties agree that any request by Defendant for an adjustment or departure that is not explicitly provided for in this Plea Agreement will be considered a material breach of this Plea Agreement, and the United States will be free to ask for any sentence, either guideline or statutory.

### **12. Satisfaction with Counsel**

Defendant is satisfied with counsel, Jose R. Aguayo, Esq., and asserts that counsel has rendered effective legal assistance.

### **13.Rights Surrendered by Defendant Through Guilty Plea**

Defendant understands that by entering into this Plea Agreement, Defendant surrenders and waives certain rights as detailed in this agreement. Defendant understands that the rights of criminal defendants include the following:

- a. If Defendant had persisted in a plea of not guilty to the charges, Defendant would have had the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States and the judge agree.

- JMP
- b. If a jury trial is conducted, the jury would be composed of twelve lay persons selected at random. Defendant and Defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree, unanimously, before it could return a verdict of either guilty or not guilty. The jury would be instructed that Defendant is presumed innocent, that it could not convict Defendant unless, after hearing all the evidence, it was persuaded of Defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.
- c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established Defendant's guilt beyond a reasonable doubt.
- d. At a trial, the United States would be required to present its witnesses and other evidence against Defendant. Defendant would be able to confront those witnesses and Defendant's attorney would be able to cross-examine them. In turn, Defendant could present witnesses and other evidence on Defendant's own behalf. If the witnesses for Defendant would not appear voluntarily, Defendant could require their attendance through the subpoena power of the Court.
- e. At a trial, Defendant could rely on the privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from Defendant's refusal to testify. If Defendant desired to do so, Defendant could testify on Defendant's own behalf.

#### 14. Stipulation of Facts


The accompanying Stipulation of Facts signed by Defendant is hereby incorporated into this Plea Agreement. Defendant adopts the Stipulation of Facts and agrees that the facts therein are accurate in every respect. Defendant agrees and accepts that had the matter proceeded to trial, the United States would have proven those facts beyond a reasonable doubt.




**15. Limitations of Plea Agreement**

This Plea Agreement binds only the United States Attorney's Office for the District of Puerto Rico and Defendant. It does not bind any other federal district, state, or local authorities.

**16. Entirety of Plea Agreement**

 This written agreement constitutes the complete Plea Agreement between the United States, Defendant, and Defendant's counsel. The United States has made no promises or representations except as set forth in writing in this Plea Agreement and denies the existence of any other terms and conditions not stated herein.

**17. Amendments to Plea Agreement**

 No other promises, terms or conditions will be entered into between the parties unless they are in writing and signed by all parties.

**18. Dismissal of Remaining Counts**

At sentencing should there be any pending counts and should the Defendant comply with the terms of this Plea Agreement, the United States will move to dismiss the remaining counts of the Indictment pending against Defendant in this case.

**19. Voluntaryness of Plea Agreement**

Defendant acknowledges that no threats have been made against Defendant and that Defendant is pleading guilty freely and voluntarily because Defendant is guilty.

## 20. Breach and Waiver

THR

Defendant agrees that defendant will have breached this Plea Agreement if, after entering into this Plea Agreement, Defendant: (a) fails to perform or to fulfill completely each and every one of Defendant's obligations under this Plea Agreement; (b) engages in any criminal activity prior to sentencing; or (c) attempts to withdraw Defendant's guilty plea. In the event of such a breach, the United States will be free from its obligation under this Plea Agreement and Defendant will not have the right to withdraw the guilty plea. Moreover, Defendant agrees that if Defendant is in breach of the Plea Agreement, Defendant is deemed to have waived any objection to the reinstatement of any charges under the Indictment, Information, or complaint which may have previously been dismissed or which may have not been previously prosecuted.

## 21. Potential Impact on Immigration Status

Pursuant to Federal Rule of Criminal Procedure 11(b)(1)(O), Defendant hereby agrees and recognizes that if convicted, a Defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

## 22. Felony Conviction

Defendant hereby agrees and recognizes that the plea of guilty in this case will be recognized as a felony conviction, which will result in the loss of certain rights, including but not limited to the right to vote in a federal election, to serve as a juror,



to hold public office, and to lawfully possess a firearm.

### **23. Forfeiture Provision**

Defendant agrees to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal.


Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

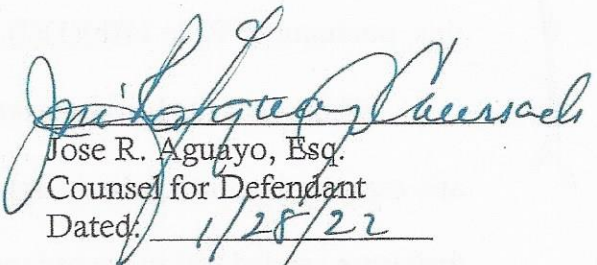
JMR Defendant acknowledges that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise Defendant of this, pursuant to Rule 11(b)(1)(J), at the time Defendant's guilty plea is accepted.

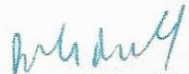
Defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. Defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. Defendant acknowledges that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct, giving rise to forfeiture and/or substitute assets for property otherwise subject to forfeiture.


Defendant, by agreeing to the forfeiture stated above, acknowledges that such forfeiture is not grossly disproportionate to the gravity of the offense conduct to which Defendant is pleading guilty. Defendant agrees that the forfeiture provisions of this Plea Agreement are intended to and will survive Defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if Defendant had survived, and that determination shall be binding upon Defendant's heirs, successors and assignees until the agreed forfeiture, including any agreed money judgment, is collected in full.

W. Stephen Muldrow  
United States Attorney

  
Teresa Zapata-Valladares  
Assistant U.S. Attorney  
Deputy Chief, Gangs Section  
Dated: 12/20/21

  
Jose R. Aguayo, Esq.  
Counsel for Defendant  
Dated: 1/28/22

  
Joseph Russell  
Assistant U.S. Attorney  
Dated: 20 December 2021

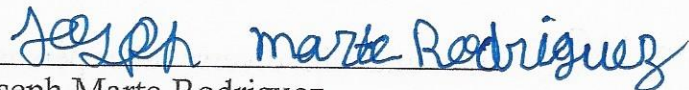
  
Joseph Marte-Rodriguez  
Defendant  
Dated: 1/28/22

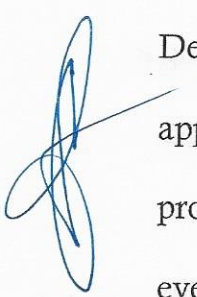


**UNDERSTANDING OF RIGHTS**

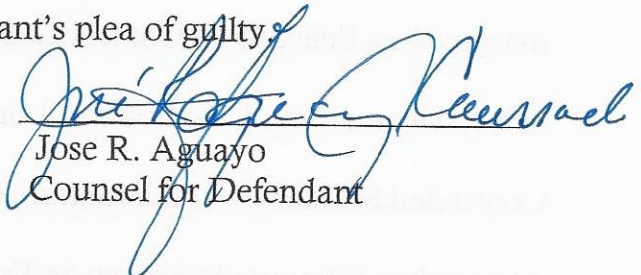
I have consulted with counsel and fully understand all of my rights as to the charges pending against me. Further, I have consulted with my attorney and fully understand my rights as to the provisions of the Guidelines that may apply in my case. I have read this Plea Agreement and carefully reviewed every part of it with my attorney. My counsel has translated the Plea Agreement to me in the Spanish language and I have no doubts as to the contents of the agreement. I fully understand this agreement and voluntarily agree to it.

Date: 1/28/22

  
Joseph Marte-Rodriguez  
Defendant

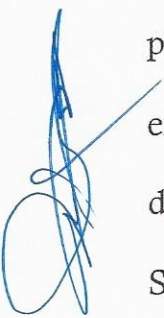
 I am the attorney for Defendant. I have fully explained Defendant's rights to Defendant with respect to the pending charges. Further, I have reviewed the applicable provisions of the Guidelines and I have fully explained to Defendant the provisions of those Guidelines that may apply in this case. I have carefully reviewed every part of this Plea Agreement with Defendant. I have translated the Plea Agreement and explained it in the Spanish language to the Defendant who has expressed having no doubts as to the contents of the agreement. To my knowledge, Defendant is entering into this Plea Agreement voluntarily, intelligently, and with full knowledge of all consequences of Defendant's plea of guilty.

Date: 1/28/22

  
Jose R. Aguayo  
Counsel for Defendant

### STIPULATION OF FACTS

In conjunction with the submission of the accompanying Plea Agreement in this case, the Defendant Joseph Marte-Rodriguez admits that Defendant is guilty as charged in the Indictment and admits the following:

JMR  
 From at least in or about August, 2015 and continuing up to and until the return of the instant Indictment, in the Municipalities of San Juan, Carolina and Trujillo Alto, District of Puerto Rico and within the jurisdiction of this Court, the defendant, did knowingly and intentionally, combine, conspire, and agree with each other and with diverse other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to knowingly and intentionally possess with intent to distribute and/or to distribute controlled substances, to wit: in excess of two hundred and eighty (280) grams of a mixture or substance containing a detectable amount of cocaine base (crack), a Schedule II Narcotic Drug Controlled Substance; in excess of one (1) kilogram of a mixture or substance containing a detectable amount of heroin, a Schedule I, Narcotic Drug Controlled Substance; in excess of five (5) kilograms of a mixture or substance containing a detectable amount of cocaine, a Schedule II, Narcotic Drug Controlled Substance; in excess of one hundred (100) kilograms of a mixture or substance containing a detectable amount of marijuana, a Schedule I, Controlled Substance; a mixture or substance containing a detectable amount of Oxycodone (commonly known as Percocet), a Schedule II Controlled Substance; and a mixture or substance containing a detectable amount of Alprazolam (commonly known as Xanax), a Schedule IV Controlled Substance;



within one thousand (1,000) feet of a real property comprising the Jardines del Paraiso Public Housing Project, Jardines de Monte Hatillo Public Housing Project, Las Dalias Public Housing Project, Monte Park Public Housing Project, Jardines de Campo Public Housing Project, San Martin Public Housing Project, Jardines de Country Club, Ernesto Ramos Antonini Public Housing Project, La Esmeralda Public Housing Project, Nuestra Senora de Covadonga Public Housing Project, housing facilities owned by a public housing authority and Los Claveles Condominium and Buen Consejo Ward, all within one thousand (1,000) feet of a real property comprising a public or private school and/or playground. All in violation of Title 21, United States Code Sections 841(a)(1), 846 and 860.

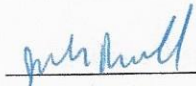
The object of the conspiracy was the large-scale distribution of controlled substances at the above-named locations for significant financial gain and profit. Defendant [3] Joseph Marte-Rodriguez acted as a leader and drug point owner for the drug trafficking organization during the span of the conspiracy. While multiple kilograms of heroin, cocaine, cocaine base "crack" and marijuana were distributed during the conspiracy, for the sole purpose of this plea agreement, the defendant acknowledges that during the span of the conspiracy he possessed with intent to distribute at least 500 grams but not more than 2 kilograms of cocaine.

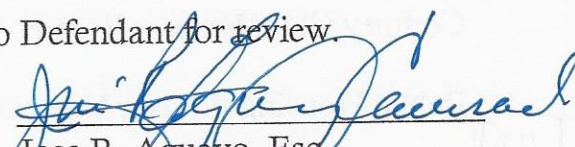
Defendant acknowledges that, during the span of the conspiracy, he possessed a firearm in furtherance of the drug trafficking carried out by the organization.

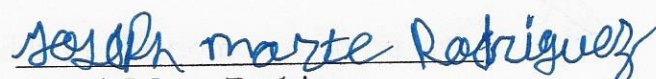
Had this matter proceeded to trial, the United States would have presented evidence through the testimony of witnesses as well as physical evidence and

documentary evidence, which would have proven beyond a reasonable doubt Defendant's guilt.

At trial, the United States would have proven beyond a reasonable doubt that defendant Joseph Marte-Rodriguez is guilty as charged in Count One of the Indictment. Discovery was timely made available to Defendant for review.

  
\_\_\_\_\_  
Joseph Russell  
Assistant U.S. Attorney  
Dated: 20 December 2021

  
\_\_\_\_\_  
Jose R. Aguayo, Esq.  
Counsel for Defendant  
Dated: 1/28/22

  
\_\_\_\_\_  
Joseph Marte-Rodriguez  
Defendant  
Dated: 1/28/22